

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BETTY J. JEFFERSON	:	CIVIL ACTION
	:	
v.	:	
	:	No. 06-5668
ANDREW G. SMYTH, et al.	:	

ORDER-MEMORANDUM

AND NOW, this 31st day of May, 2007, the “Motion of Defendant Robert Hilferty and United States Postal Service to Substitute United States of America as Defendant and Motion to Dismiss Pursuant to 12(b)(1) and 12(b)(6)” is granted in part and denied in part, as follows:

1. All claims against Robert Hilfery, individually, and the United States Postal Service are dismissed, and the caption is amended to reflect the substitution of the United States as the correct party defendant. Schrob v. Catterson, 967 F.2d 929, 934 (3d Cir. 1992) (where a federal employee is acting within the scope of his employment, claims against him should be dismissed and the United States substituted in his stead); McDevitt v. United States Postal Service, 963 F. Supp. 482, 482 (E.D. Pa. 1997) (dismissal of Postal Service and substitution of United States proper under 28 U.S.C.A. § 2679(a)).

2. Plaintiff’s claims against the United States are dismissed for lack of subject matter jurisdiction, plaintiff having failed to file an administrative claim as required under the Federal Tort Claims Act, 28 U.S.C.A. § 2675(a).

3. The cross-claim of Andrew G. Smyth against the United States is not dismissed, because it was filed before the dismissal of plaintiff’s claims against the United States.

Glaziers and Glassworkers Union Local 252 Annuity Fund v. Newbridge Securities, Inc., 823 F. Supp. 1188, 1190 (E.D. Pa. 1993), citing Fairview Park Escavating Co. v. Al Monzo Construction Co., 560 F.2d 1122, 1126 (3d Cir. 1977) (“If the original claim against the party is dismissed on the merits, any cross-claims previously filed against that party may remain.”)

BY THE COURT:

/s/ Edmund V. Ludwig
Edmund V. Ludwig, J.